

this is critically important so that our public can see the progress we are making in improving health outcomes, healthy behavior, and cost-effectiveness.

In this last hour, we have heard from many of our new freshman colleagues about the successful efforts to reform the way we deliver health care in our country. I thank my colleagues for sharing those ideas with us.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

#### HEALTH CARE REFORM

Mr. CRAPO. I, too, would like to talk about health care. As we speak here in the Senate, the House is preparing to debate and reportedly vote by late this week or early next week on a massive new health care bill that will dramatically expand the size of our government, dramatically increase taxes, and establish a government-controlled insurance system.

While in the Senate we are not yet clearly aware of what the bill we will be debating is because it is still being crafted behind closed doors, we have an idea, and we are pretty sure some of the elements that are going to be included in it are the same elements we debated in the Finance Committee and the HELP Committee as those committees worked on their product here. In that context, we expect we will see also here in the Senate a massive new expansion of the size of government, up to \$1 trillion or more. If it is anything like what the Finance Committee bill was, we will see taxes increased on the American public by over \$500 billion, we will see cuts in Medicare, which we discussed yesterday, of over \$400 billion, and a significant expansion of the control of the Federal Government over our health care economy. Today, I want to focus on just the tax piece of this situation.

One of the most common provisions we have seen here in the Senate that we clearly expect will be in the final bill is the proposed 40-percent excise tax on high-cost or "Cadillac" health care plans. This has been defined as health care plans that are valued at more than \$8,000 for an individual or valued at more than \$21,000 for a family.

It is important to note these thresholds are not indexed to the increasing cost of health care spending but instead are indexed to inflation plus 1, which means that over time this will, similar to the alternative minimum tax, eat further and further into the American public's health care plans, which will then be taxed.

The Joint Tax Committee has scored this tax to generate \$201 billion of revenue to pay for that portion, \$201 billion of this new Federal spending proposal. Many think that because it is called an excise tax on health care plans, it is not going to impact them. They will be surprised to learn that in

my questioning of the Joint Tax Committee, we were told the vast majority of this \$201 billion tax is expected to be collected directly from the middle class, individuals who will be paying more income and payroll taxes.

Let's figure out how that can be. It turns out that as we analyze the way this tax is going to work, employers that will face a 40-percent excise tax on the health care they provide to their employees will begin to adjust the value of their health care plans so they avoid the tax. As they do so, they will reduce the health care they are providing to their employees and, presumably—and we expect they will—increase the wages they are paying to their employees so their employees' net compensation is not changed. The result of that, though, is that since the health care portion of the compensation is not taxed and the income portion of an employee's compensation is taxed, the employee will actually pay higher taxes, both on the income and on the payroll tax level.

Maybe a real-world example will demonstrate. In my State of Idaho, the Census Bureau says the median household income is about \$55,000 per year. In this case, let's take an example of a single woman who currently earns \$60,000 per year in annual compensation from her employer. We have an example represented by this chart. Let's assume she has a \$10,000 valued health policy. Her total compensation package from her employer is going to be \$60,000—\$50,000 in wages and \$10,000 in employer-provided health care benefits. She is taxed on \$50,000 and gets the \$10,000 health care benefit without taxation. What will happen in the bill, as I have indicated, is this \$10,000 health care policy will be subject to a 40-percent excise tax. In order to avoid that excise tax, the company will simply react by reducing her health care policy to below \$8,000 and increase her income.

Let's put up another chart to see what the likely reaction of the employer will be: Not to pay the insurance fee, as many here are saying, but simply to skip that and direct her tax dollars to the Federal Government. If this new high-cost plan is to be enacted, the theory is her employer will make the adjustments to change her overall compensation package in a way that she ends up with higher wages.

Let's put the next chart up to show how this would work. Under this proposal, her health care benefits are going to go down. Let's assume the company reduces her health care benefits from \$10,000 in value to \$6,000 in value and gives her the extra \$4,000 in income. Her health care benefits will go down. She will pay more taxes because she now has \$4,000 more of her package that is subject to compensation. The net value of her compensation will go down because of increased taxes. The result is, we are going to see millions of Americans pay this excise tax squarely in contravention of the

President's promise that no individuals who make less than \$200,000 will pay income taxes or payroll taxes or, in the President's words, "any other kind of taxes."

So we are clear on this, the estimates are that 84 percent of this tax is going to be paid by those who are earning less than \$200,000 per year. As a matter of fact, if we look at those who make less than \$50,000 a year, we expect somewhere in the neighborhood of 8 million Americans will fall into this category. If we look at the number who make less than \$200,000 per year, we expect that number will be above 25 million Americans who will be paying more taxes, both payroll and income taxes, and receiving less health care benefits from their employer.

The net result is, the President's promise that one can keep their health care if they like it will not be honored because of this provision. People will see, necessarily, that their employers will begin reducing health care packages to make them fit the tax structure this bill will create.

Secondly, there is the President's promise that if you make less than \$200,000 as an individual or \$250,000 as a family, you will pay no taxes under this proposal. As we have seen with this one example—and there are a number of other examples in the proposal being developed—in this one example of \$201 billion worth of the new taxes in the bill, those making less than \$200,000 will pay over 80 percent of it, and it will come directly out of their pockets and their compensation package with their employer.

In the time I have remaining, I wish to focus on one additional element. There is also a proposal to increase the bar for deductions of health care expenses. In other words, those who deduct their expenses and itemize their deductions can today deduct that portion of their income over 7.5 percent of their income that is represented by their health care expenses. This bill will increase that to 10 percent and generate over \$15 billion of additional taxes in that format. Who is the most likely to pay these taxes? People who have relatively low health care costs are going to end up not meeting that 7.5-percent threshold, now to be brought to 10 percent, and probably will not be able to benefit from the deductibility of their health care. But those who face medical crises, those who have health care expenses that exceed the value of 10 percent, will see their deductibility reduced again by these proposals. The net result: Millions of Americans making less than \$200,000 a year will pay more taxes.

I encourage the Senate, as we move forward in the debate, to recognize that the tax provisions contained in it are squarely going to hit those in the middle class.

The PRESIDING OFFICER (Mr. WARNER). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I am sorry the Presiding Officer, the Senator from Virginia, has to listen to me twice on the same subject.

When I am referring to a bill, I am referring to the 2,000-page House bill.

Small business is very vital to the health of our economy. The President and I agree that 70 percent of new private sector jobs are created by small business. Small business is the employment machine of the American economy. However, where the President and I differ is, I believe small business taxes should be lowered, not raised, to get our economy back on track. You will hear from my discussion, this 2,000-page bill raises taxes on small business.

The President and my colleagues on the other side of the aisle have proposed increasing the top marginal tax rates from 35 percent to 39.6 percent, respectively. We can see that on the chart under the proposed Obama budget, 39.6 percent is where they would raise them. They have also proposed increasing the tax rates on capital gains and dividends to 20 percent and providing for an estate tax rate as high as 45 percent and an exemption of that estate tax of \$3.5 million. Also, the President and congressional Democrats have called for fully reinstating the personal exemption phase-out. I will refer to the personal exemption phase-out as PEP. They would do that for those making more than \$200,000 a year. In addition, they have called for fully reinstating the limitation on itemized deductions, which is known as Pease after a former Congressman Pease of Ohio, for those making also more than \$200,000.

Under the 2001 tax law, PEPs and Pease are scheduled to be completely phased out in 2010. That means the tax rate for current 35-percent-rate taxpayers would go up, as we can see on the chart, to 41 percent. For the vast majority of people who earn less than \$200,000, raising taxes on high earners might not sound so bad. However, this means many small businesses will be hit with a higher tax bill. From the standpoint of it being where they create 70 percent of the new jobs, that is bad not only for those taxpayers, that is bad for the entire economy.

As if this was not bad enough for small business, the tax increases I have already talked about, the House Democrats, in this 2,000-page health care reform bill, have proposed a new surtax of 5.4 percent. With this small business surtax, a family of four in the top bracket will pay a marginal tax rate of 46.4 percent by the year 2011. So we go from current law of 35 percent to automatically, if Congress doesn't intervene, 39.6 percent; and then eliminate the PEPs and Pease, 41 percent; and then do what the House Democrats want to do, 46.4 percent, a marginal tax rate that is very high and very negative to employment by small business.

This tax change would result, cumulatively, in an increase of marginal tax rates of 33 percent, a 33-percent in-

crease over what taxes people pay right now.

Owners of the many small businesses, whether regular—which could be so-called C corporations—or other entities that receive dividends or realize capital gains, would face a 25-percent rate increase under this House bill. So we have a 15-percent capital gains rate today on dividends going up almost 70 percent by January 1, 2011.

Campaign promises are pretty important. Candidate Obama pledged on the campaign trail that:

Everyone in America—everyone—will pay lower taxes than they would under rates Bill Clinton had in the 1990s.

That is quite a promise. That is good for business, if it is lower than what Bill Clinton had. The small business surtax proposed by House Democrats, however, violates President Obama's pledge he made as a candidate. Therefore, I want Members to know I stand with President Obama in opposing the small business surtax proposed by House Democrats in this bill, this 2,000-page bill.

According to the National Federation of Independent Businesses—they made a survey—their data shows that 50 percent of the owners of small businesses that employ 20 to 249 workers would fall into the top bracket. The red bar shows 50 percent of all small employers fall into that bracket. According to the Small Business Administration, about two-thirds of the Nation's small business workers are employed by small businesses with 20 to 500 employees.

Do we want to raise taxes on these small businesses that create new jobs and employ two-thirds of all small business workers?

In his radio address a few months ago, the President noted small businesses are hurting. They are hurting because we are helping Wall Street, but we are not helping Main Street with all the things we are doing in Congress. Of course, there is no argument from this side of the aisle on that point.

President Obama recognized in that speech the credit crunch on small businesses continues, despite hundreds of billions in bailout money to big banks. With these small businesses already suffering from the credit crunch, do we want to think it is wise to hit them with a double whammy of a 33-percent increase in their marginal tax rate?

Just yesterday, we received data from the nonpartisan official congressional tax scorekeepers, the Joint Committee on Taxation, that said \$1 out of every \$3 raised by the massive \$461 billion House surtax—and that is in this 2,000-page bill—would come from small businesses. That is a conservative, a very conservative estimate because other kinds of income that these business owners receive, such as capital gains and dividends, are not included in that figure.

If the proponents of the marginal rate increase on small business owners agree that a 33-percent tax increase for half-half—the small businesses that

employ two-thirds of all small business workers is not wise, then they should either oppose these tax increases or present data that shows different results.

This House bill of 2,000 pages and the surtax included in it piles on the heavy taxes small businesses will face. In a time when many businesses are struggling to stay afloat, does it make sense to impose an additional burden on them by raising their taxes? Odds are, they will cut spending. In other words, the small businesses will cut spending. They will cancel orders for new equipment, cut health insurance for their employees, stop hiring, and lay off people.

Instead of seeking to raise taxes on those who create jobs in our economy, our policies need to focus on reducing excessive tax and regulatory barriers that stand in the way of small businesses and the private sector making investments, expanding production, and creating sustainable jobs—creating sustainable jobs, which is what I refer to as small business being the job-creating miracle of our economy.

So I want you to know, regardless of this 2,000-page House bill, with these big tax increases in it, I will continue to fight to prevent a dramatic tax increase on our Nation's job engine, the small businesses of America.

I hope my friends on the other side of the aisle will follow accordingly.

Mr. President, I ask unanimous consent that a statement from the Joint Committee on Taxation, backing up some of the figures I used in my speech, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON TAXATION,  
Washington, DC, November 3, 2009.

#### MEMORANDUM

To: Mark Prater, Nick Wyatt, and Jim Lyons

From: Tom Barthold

Subject: Revenue Estimate

This memorandum is in response to your request of October 30, 2009, for an estimate of the percentage of revenue raised from the 5.4-percent AGI surtax included in the "Affordable Health Care for America Act" attributable to business income.

For purposes of this analysis, business income consists of income from sole proprietorships (Schedule C); farm income (Schedule F); and income from rental real estate, royalties, partnerships, subchapter S corporations, estates and trusts, and real estate mortgage investment conduits (Schedule E), as would be reported on lines 12, 17, and 18 of the 2008 Form 1040. We do not count as "business income" income from interest, dividends, or capital gains that may flow through certain pass-through entities but which is reported elsewhere on an individual's return.

Under the "Affordable Health Care for America Act," a 5.4-percent surtax would be imposed on adjusted gross income ("AGI") in excess of \$500,000 (\$1,000,000 in the case of a married taxpayer filing a joint return). For purposes of responding to your request, we have assumed that net positive business income is "stacked" last relative to the other

income components of AGI. For example, a married taxpayer filing jointly with \$2 million of AGI including \$500,000 of net business income would have one-half of the taxpayer's \$54,000 surtax liability under the "Affordable Health Care for America Act" attributed to the taxpayer's net business income.

We estimate that one-third of the \$460.5 billion estimated to be raised in fiscal years 2011-2019 from the 5.4-percent AGI surtax under the "Affordable Health Care for America Act" is attributed to business income.

Mr. GRASSLEY. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. KIRK). The Senator from Indiana.

#### START TREATY INSPECTIONS LEGISLATION

Mr. LUGAR. Mr. President, I rise to speak on S. 2727, the START I Treaty Inspections and Monitoring Protocol Continuation Act of 2009, which I introduced yesterday.

This bill provides authority that would allow the President of the United States to extend, on a reciprocal basis, privileges and immunities to Russian arms inspection teams that may come to the United States to carry out inspections permitted under the Strategic Arms Reduction Treaty or START I.

This bill is necessary because, on December 5—1 month from today—the START I treaty will expire. This treaty, signed in 1991, is obscure to many in the Senate. Only 26 current Senators were serving at the time we voted on the resolution of ratification in October 1992. But the START I treaty has been vitally important to arms control efforts up to the present day because it contains a comprehensive verification regime that undergirds every existing United States-Russian treaty that deals with strategic arms control.

It is essential to understand that a successful arms control regime depends on much more than mutual agreement on the numbers of weapons to be eliminated. Arms control agreements also must provide for verification measures, including seemingly mundane details, such as delineating the privileges and responsibilities of verification teams operating in each other's countries, as well as the procedures for conducting those inspections.

These details require legal authorization that minimizes disputes and reinforces reciprocal expectations of how the verification regime will function. If the legal authorization for strategic arms control verification lapses, as it will in 1 month, we will be creating unnecessary risks for the national security of the United States and our working relationship with Russia.

It had been my hope that the previous and current administrations would have made substantially more progress in ensuring the continuity of the START I verification system so the legal authorities I am proposing would not be necessary. But we have reached the point where both the United States and Russia must take steps to ensure

the continuity of verification mechanisms.

In 2002, the Senate considered the Moscow Treaty governing strategic nuclear forces. That treaty contained no verification mechanisms. Instead, it relied on the verification regime established in the START I treaty. During Senate consideration of the Moscow Treaty, I asked Secretary of State Colin Powell and Secretary of Defense Donald Rumsfeld about the apparent gap in verification that could occur, given that the Moscow Treaty extends to 2012, while the START I verification provisions were set to expire on December 5, 2009, this year.

Secretary Powell stated:

It did not seem to be something that was pressing at the moment.

He said that during negotiations on the Moscow Treaty, consideration was given to extending the START verification regime past 2009 in a separate negotiation or that the transparency measures under the Moscow Treaty could be maximized in some way to provide for enhanced verification. But Secretary Powell said, in 2002, that we had "some 7 years to find an answer to that question."

Likewise, Secretary Rumsfeld was questioned about the verification gap created by the 2009 expiration of START. He stated:

There is [a gap], from 2009 to 2012, exactly. But between now and 2009 . . . there is plenty of time to sort through what we will do thereafter. . . . Will we be able to do something that is better than the START treaty? I hope so. Do we have a number of years that we can work on that? Yes.

I was pleased to play a role in securing ratification of the Moscow Treaty on March 6, 2003. But, at that time Senators were led to understand the Bush administration would begin work with Russia on codifying a verification regime under the Moscow Treaty, either by continuing the START verification regime past 2009 or through other measures. Neither was accomplished.

The START treaty itself provides that the parties must meet to extend the treaty "no later than one year before the expiration of the 15-year period" of its duration. In 2008, we witnessed the conflict in Georgia. December 5, 2008, was the date by which the United States and Russia would have to meet to satisfy the treaty's requirements. Many worried that the atmosphere created by the Georgia situation would prevent the United States and Russia from conducting such a meeting. But to the Bush administration's credit, a meeting was held that provided us the possibility of extending the treaty. But the clock kept ticking.

I noted during Secretary Clinton's confirmation hearings, on January 13, 2009, it was vital that the START treaty be renewed. At that time, she assured the committee that "we will have a very strong commitment to the START Treaty negotiation." I do not doubt that commitment. I am hopeful the capable negotiators we have de-

ployed to Geneva will achieve a new treaty in the remaining 30 days before expiration. But even if that happens, the time required for a thorough Senate consideration of the treaty ensures that it will not be ratified before START I expires.

At the core of the START treaty rests its verification regime—a system of data exchanges and more than 80 different types of notifications covering movement, changes in status, conversion, elimination, testing, and technical characteristics of new and existing strategic offensive arms. This data is further verified through an inspection regime. The START I treaty inspection protocol permits no less than 12 different types of inspections pursuant to the treaty.

According to a fact sheet released by the Department of State in July 2009, the United States has conducted more than 600 START inspections in Belarus, Kazakhstan, Russia, and Ukraine. Russia has conducted more than 400 inspections in the United States. These intrusive, onsite inspections permit the United States to verify the kinds and types of Russian weapons being deployed, as well as to examine modified versions of Russia's weapons. It is this ability, in addition to our own national technical means, that gives us the capabilities and confidence to ensure effective verification of the treaty.

Some skeptics have pointed out Russia may not be in total compliance with its obligations under START. Others have expressed opposition to the START treaty on the basis that no arms control agreement is 100-percent verifiable. But such concerns fail to appreciate how much information is provided through the exchanges of data mandated by the treaty, onsite inspections, and national technical means. Our experiences, over many years, have proven the effectiveness of the treaty's verification provisions and served to build a basis for confidence between the two countries when doubts arose. The bottom line is, the United States is far safer as a result of these 600 START inspections than we would be without them.

Testifying before the Foreign Relations Committee on the INF Treaty in 1988, Paul Nitze provided the definition of "effective verification." He stated:

What do we mean by effective verification? We mean that we want to be sure that, if the other side moves beyond the limits of the Treaty in any militarily significant way, we would be able to detect such a violation in time to respond effectively and thereby deny the other side the benefit of the violation.

In a similar vein, Secretary of Defense Bob Gates testified in 1992, when he was Director of Central Intelligence, that the START treaty was effectively verifiable and that the data it provides would give us the ability to detect militarily significant cheating.

The Senate has repeatedly expressed confidence in the START I verification procedures. It approved the START I treaty in 1992, by a vote of 93 to 6. In